DUFFERIN.

The GOVERNOR GENERAL transmits for the information of the SENATE and HOUSE OF COMMONS copies of further correspondence which has taken place with the Right Honorable the Secretary of State for the Colonies, relating to the commutation of the sentence of death passed on Ambroise Lepine for the murder of Thomas Scott at Fort Garry.

GOVERNMENT HOUSE,
March, 1875.

(Copy—*Secret and confidential.*)

GOVERNMENT HOUSE,
OTTAWA, December 15th, 1874.

MY DEAR MORRIS,—I write you one line, in order to avoid all mistakes and accidents, to say that although Lepine's ultimate fate is still undetermined, the capital sentence will certainly not be carried into execution.

There will be no risk, as I understand, of the final instructions on the subject not reaching you in time, but in a matter of such moment one cannot be too cautious, especially when you are dealing with people between whom and yourself there intervene so many leagues of snow.

If, therefore, by any mischance there should not arrive orders to you to stay the hanging of Lepine this letter will be your authority for doing so.

Please telegraph to me that you have received it.

Yours sincerely,
(Signed,) DUFFERIN.

Hon. A. Mackenzie to Lieut.-Governor Morris.

(Copy.)

OTTAWA, January 6th, 1875.

In case of any miscarriage of documents, you are authorized to stay execution of Lepine. Papers will be mailed next week. Acknowledge receipt.

(Signed,) A. MACKENZIE.

Lieut.-Governor Morris to Hon. A. Mackenzie.

FORT GARRY, January 6th, 1875.

Yours received. Will act as requested if necessary.

(Signed,) A. MORRIS.

The Earl of Dufferin to the Secretary of State for the Colonies.

(Copy—No. 9.)

OTTAWA, January 18th, 1875.

MY LORD,—In further reference to previous correspondence, I have the honour to enclose for your Lordship's information a copy of a communication I have addressed to the Honorable Télesphore Fournier, my Minister of Justice, instructing him to commute the Capital Sentence recently passed on Ambroise Lepine, into imprisonment for two years in gaol, and the permanent forfeiture of his political rights.

2. In thus dispensing with the advice of my responsible Ministers, and exercising the Queen's Prerogative, according to my own judgment, I am aware I have undertaken a very grave responsibility, more especially as the facts and considerations by which the issue has to be determined are of a very complex and embarrassing character. Upon these, however, I will not enlarge as they have already been fully set forth in former despatches.

3. I am quite convinced that the matter is one which, in the general interests of this country, will have been best dealt with by my direct action.

4. Although the commuted sentence may appear very inadequate to the enormity of the crime of which it is the punishment, I believe it to be such as will best satisfy the conflicting exigencies of the case.

I have &c., &c.,

(Signed,) DUFFERIN.

The Right Honorable
The Secretary of State for the Colonies.

Governor General's Secretary to the Minister of Justice.

(Copy.)

GOVERNMENT HOUSE,
January 15th, 1875.

SIR,—I am commanded by the Governor General to inform you that His Excellency has had under his full and anxious consideration the evidence and other documents connected with the trial of Ambroise Lepine, who has been capitally convicted before the Court of Assize, held at Winnipeg on the 10th day of October 1874, of the murder of Thomas Scott on the 4th day of March, 1870, at Fort Garry.

Although His Excellency entirely agrees with the finding of the Jury, and considers that the crime of which the prisoner Lepine has been convicted was nothing less than a cruel and unjustifiable murder, he is of opinion that subsequent circumstances, and notably the relations into which the Provincial Authorities of Manitoba entered with the prisoner and his associates, are such as in a great degree to fetter the hands of justice.

It further appears to His Excellency that the case has passed beyond the province of Departmental Administration, and that it will be best dealt with under the Royal Instructions, which authorize the Governor General in certain capital cases to dispense with the advice of his Ministers, and to exercise the prerogative of the Crown according to his independent judgment, and on his own personal responsibility.

I have it, therefore, in command to inform you that it is His Excellency's pleasure that the capital sentence passed upon the prisoner Lepine be commuted into two years imprisonment in gaol from the date of conviction, and the permanent forfeiture of his political rights.

His Excellency desires that the necessary instrument for giving effect to this commutation be forthwith prepared.

I have, &c., &c.,

(Signed,) H. C. FLETCHER,
Governor General's Secretary.

To the Honorable
The Minister of Justice, Ottawa.

The Earl of Carnarvon to the Earl of Dufferin.

(Copy—Canada—No. 47.)

DOWNING STREET,
11th February 1875.

MY LORD,—I have the honour to acknowledge the receipt of your despatch, No. 9, of the 18th of January, enclosing for my information a copy of a letter addressed by your direction to the Minister of Justice of the Dominion of Canada, instructing him to take the necessary steps to commute the capital sentence recently passed on Ambroise Lepine into imprisonment for two years in gaol and the permanent forfeiture of his political rights.

Having fully expressed to you my views on the subject in my despatch of the 7th of January, No. 9, I will now only add that I am satisfied that before arriving at this decision you had carefully weighed all the circumstances of the case and the conditions of the public feeling throughout the Dominion, and that Her Majesty's Government place the fullest reliance upon the judgment and ability of which, during your administration of the Government of Canada, you have already given repeated proofs.

I have, &c., &c.,
(Signed.) CARNARVON.

The Right Honorable
The Earl of Dufferin, K.P., K.C.B.

Despatch—Appeals to Privy Council.

(Circular.)

DOWNING STREET,
28th November, 1874.

SIR,—1. The Administrator of the Colonial Government has recently forwarded to me a petition to the Queen in Council from one of the parties in a private suit, for leave to appeal to Her Majesty in Council from a Judgment of the Supreme Court of the Colony.

2. I take this opportunity to inform you that it is no part of the duty of the Governor of a Colony to forward such Petitions, but that it should be brought before the Lords of the Judicial Committee of the Privy Council by a professional agent of the Petitioner in the usual manner.

3. I have further to inform you that it is not the practice of the Judicial Committee to return any answer to such Petitions until an appearance has been entered on behalf of the Petitioner.

4. If, therefore, application should be made to you by a party in a private suit to transmit a Petition of this nature to the Secretary of State, you will decline to do so; and you will inform the Petitioner what are the proper steps to be taken in the matter.

I have the honour to be, Sir,
Your most obedient humble Servant,
CARNARVON.

The Officer Administering
Government of Canada.

Conditional Pardon in favor of Ambroise Lepine.

(Signed,) DUFFERIN.

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To all to whom these Presents shall come, or whom the same may in anywise concern ;

GREETING :—

WHEREAS at a sitting of Our Court of Oyer and Terminer and General Gaol Delivery, begun and holden at the Court House, in the City of Winnipeg, in the Province of Manitoba, in Our Dominion of Canada, on the tenth day of October, in the thirty-eighth year of Our Reign, one Ambroise Lepine, was in due form of law, convicted of a certain felony, for that the said Ambroise Lepine, to wit, on the fourth day of March, one thousand eight hundred and seventy, did murder one Thomas Scott.

And whereas upon the said conviction, it was considered and adjudged by Our said Court, that the said Ambroise Lepine should be taken back to the gaol from whence he came, and thence, on the twenty-ninth day of January, then next ensuing, to the place of execution, and that he should there be hanged by the neck until he should be dead, as in and by the record of the said conviction and sentence still remaining in Our said Court, reference being thereunto had, may more fully appear.

And whereas We have been implored to grant, unto the said Ambroise Lepine, Our Royal Pardon, for and in respect of the said felony, whereof he so stands convicted as aforesaid, and for and in respect of the said sentence, so imposed upon him as aforesaid.

Now, therefore, Know Ye, that having taken the premises into Our Royal consideration and for divers good causes and considerations Us thereunto moving, being willing to extend Our Grace and Mercy unto the said Ambroise Lepine, We have pardoned, remitted and released, and by these presents, do pardon, remit and release him the said Ambroise Lepine of and from the said sentence, for and in respect of the said felony whereof he so stands convicted as aforesaid, and of and from all and every the penalties to which he was liable in pursuance thereof.

Provided always, and this Our Royal Pardon, Remission and Release are granted upon the express condition, that the said Ambroise Lepine, do and shall be and remain confined in the Common Gaol at Winnipeg, in the Province of Manitoba, and submit and conform to all and every the rules and regulations thereof until the twenty-fifth day of the month of October, which will be in the year of Our Lord one thousand eight hundred and seventy-six, and upon the further express condition, that the said Ambroise Lepine do forfeit, surrender and wholly abandon, for and during the term of his natural life his political rights, and the exercise of the same within the Dominion of Canada, and do and shall submit and conform and to such permanent forfeiture surrender and abandonment of his political rights as aforesaid.

In default whereof, or of either of the express conditions hereinbefore provided, this Our Royal Pardon, Remission and Release and every clause, matter and thing herein contained shall be and remain null and void to all intents and purposes whatsoever.

In testimony whereof, &c.

At Our Government House in Our City of Ottawa, this nineteenth day of January, in the year of Our Lord one thousand eight hundred and seventy-five, and in the thirty-eighth year of Our Reign.

By Command,

(Signed,) R. W. SCOTT,
Secretary of State.

(Signed), T. FOURNIER,
Attorney-General of Canada.

CANADA,
Province of Manitoba.

COURT OF QUEEN'S BENCH
(*Crown side,*)
November Term, 1873.

The Jurors for Our Lady the Queen, upon their Oath Present,—That Ambroise Lepine, on the Fourth day of March, in the year of Our Lord one thousand eight hundred and seventy, at Upper Fort Garry, a place then known as being, lying and situate in the District of Assiniboia, in the Red River Settlement, in Rupert's Land, and now better known as being, lying and situate at Winnipeg, in the County of Selkirk, in the Province of Manitoba, Dominion of Canada,—feloniously, wilfully and of his malice aforethought, did kill and murder one Thomas Scott, against the form of the statute, in such case made and provided and against the peace of Our said Lady the Queen, Her Crown and Dignity.

(Signed,) HENRY J. CLARKE, Q.C.,
Attorney-General.

(Translation.)

CANADA,
Province of Manitoba,
County of Selkirk.
REGINA,
vs.
AMBROISE D. LEPINE,

COURT OF QUEEN'S BENCH,
(*Crown side*).

I, Ambroise D. Lepine, of St. Boniface, in the County of Selkirk, being duly sworn, depose and say :—

That I am a prisoner at Winnipeg, in the County of Selkirk, on the charge of having killed Thomas Scott on the 4th day of March, 1870, and that, upon indictment, a true bill has been found against me by the Grand Jury during the present term of this Court.

That I reply to the said indictment by a plea taking exception to the jurisdiction of this honorable Court in respect of the offence of which I am accused, which plea is herewith produced ; and that all the facts set forth in the said plea are, to the best of my knowledge, true and well founded.

(Signed,) A. D. LEPINE.

Sworn before me at Winnipeg, in the County of Selkirk, this 17th day of November, A.D., 1873. (Signed,) DANIEL CAREY, a Commissioner for taking affidavits in B. R., for the four Counties of Selkirk, Lisgar, Marquette and Provencher.

(*Translation*).

CANADA,
Province of Manitoba,
Winnipeg.
REGINA,
vs.
AMBROISE D. LEPINE.

COURT OF QUEEN'S BENCH.

And the said Ambroise D. Lepine, personally here present, after having heard the indictment read, declare that the Court of Our Lady the Queen here cannot take cognizance of the crime of murder, in the said indictment mentioned, because, while protesting his innocence, he the said Ambroise D. Lepine declares that, at the time when the said crime is alleged to have been committed, the territory which now constitutes the Province of Manitoba did not form part of the Dominion of Canada, and that the said Dominion

had then no jurisdiction whatsoever in this country and that the offence in question was then within the cognizance of the Imperial authorities only ; and that the said Imperial authorities have never since delegated to the Dominion of Canada the necessary jurisdiction and power to take cognizance of the said offence ; that consequently within the Dominion of Canada, nor the Courts of Manitoba, which derive their authority and jurisdiction from the Dominion of Canada, have the jurisdiction necessary for taking cognizance of the crime specified in the said indictment.

And this the said Ambroise D. Lepine is prepared to prove.

Wherefore the said Ambroise D. Lepine prays that by the judgment of the said Court it may be declared that the said Court of Our Lady the Queen cannot take cognizance of the said indictment, and that in consequence he may be by the said Court here discharged and liberated from the said indictment.

(Signed,) ROYAL & DUBUC,
Counsel for the Prisoner.

Winnipeg, November 17th, 1873.

CANADA,
Province of Manitoba,
in re
REGINA
vs.
AMBROSE D. LEPINE.

COURT OF QUEEN'S BENCH
(*Crown side.*)

Motion on behalf of prisoner, that sentence be not pronounced against the said prisoner, according to the "verdict of murder" found against him by the jury in this case, but that said verdict be declared null and void and set aside, and judgment in this case arrested for the following reasons, to wit :

1st. That this Court had no legal jurisdiction to try, hear and determine upon the offence alleged to have been committed by the prisoner as laid in the indictment.

2nd. That it appears on the face of the indictment itself that the offence of which the prisoner is accused was not committed within the limits of the jurisdiction of this Court.

3rd. That in empanelling the jury to try the issue in this case, the names of the jurors were not called alternately from each of the English and French lists, in the order in which the names of the jurors stand on said lists, inasmuch as the name of Peter Harkness *alias* Peter Harknut he being one of the jurors whose names were on the French list, was immediately called after the name of Jos. Berthelet, whose name stands on the said French list.

4th. Because, after the list of jurors purporting to be the French list having been gone through and exhausted by the challenges of the Defence and the orders to stand aside by the Crown, the Court, instead of calling again the name of the first juror remaining unchallenged on said list, as required by law and practice, directed the name of Duncan McDougall, which stood the thirteenth on the said French list, to be called, and allowed then and there the Crown to challenge peremptorily the said Duncan McDougall as one of the jurors in this trial ; and the Court, after the name of the said Duncan McDougall had been so called and challenged, proceeded and directed to call the name of Moise Goulet, which stood the second on the said French list, the counsels for the defence having at the time objected to this mode of calling the jurors.

(Signed,) CHAPLEAU & ROYAL,
Counsel for Prisoner.

Winnipeg, October 28th, 1874.

Service accepted,
October 28, 1874.
(Signed,) F. Evans Cornish,
Crown Officer.

Judgment of Chief Justice Wood.

The Queen *vs.* Lepine.—The prisoner, in the November Term, 1873, of this Court, was indicted for the murder of Thomas Scott, on the 4th of March, 1870, at Upper Fort Garry, a place then being in the District of Assiniboia, in the Red River Settlement, in Rupert's Land, within the territories heretofore granted to the "Governor and Company of Adventurers of England trading into Hudson Bay," and now within the territory forming the Province of Manitoba, one of the Provinces composing the Dominion of Canada.

On this indictment the prisoner was, on the 15th of November last, arraigned, and entered a plea to the jurisdiction of the Court, alleging that the territory now forming the Province of Manitoba, at the time the offence is alleged to have been committed, formed no part of the Dominion of Canada, and at that time the Dominion of Canada had no jurisdiction in this Province, or in the territory now forming the Province, and that the offence could only be heard and determined by the Imperial authorities, and the Imperial authorities never transmitted to or conferred upon the Dominion of Canada power to take cognizance of the offence; and that, therefore, neither the Dominion of Canada nor the Court of Queen's Bench in Manitoba had or has jurisdiction over the offence charged in the indictment.

To this plea the Crown demurred.

The case was argued in November Term, 1873, before my brother McKeagney (my brother Betournay having sat on the preliminary examination in the Police Court, and on the question of juisdiction being raised, having over-ruled the plea), who reserved judgment until the next term (March, 1874), and who then further reserved judgment until the present June Term, stating he would like to have the assistance of the Chief Justice, and to have the case argued *de novo*.

The case has now been ably argued both on behalf of the prisoner and the Crown, and as I have no doubt as to the judgment that should be given, I do not think any good end can be gained by delay, and I have, therefore, decided to follow the argument by immediate judgment.

The Province of Manitoba is a portion of Rupert's Land, and is embraced in the Royal grant and charter made by King Charles the Second in 1670 to Prince Rupert and his associates, incorporated under the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay."

By the terms of the charter, the Company was granted all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds, in whatsoever latitude they should be that might be within the entrance of the straits commonly called Hudson's Straits; and all this territory was to be called Rupert's Land, and reckoned one of His Majesty's plantations or colonies in America, and the Company was to be lord proprietor under the Crown of the same forever; and the Company was clothed with absolute legislative and judicial power over all these lands, provided its laws were to be reasonable and not contrary to the laws of England; and it was empowered to employ an armed force to protect its territory and to enforce its laws.

It is scarcely necessary to observe that under its full and ample powers the Company could establish Courts, both civil and criminal, of unlimited jurisdiction, in which justice might be administered according to the laws of England.

The limits of Rupert's Land seem to be such territories as were drained by or formed the watershed of all the rivers, lakes and waters which flowed into Hudson's Straits, or into the Hudson's Bay, which were not then possessed by any subjects of His Majesty, or by the subjects of any other Christian Prince or State. There was, at the time the charter was granted, and is yet, a vast extent of country in the north-west not within the limits of Rupert's Land, nor within the limits of what now comprises Quebec and Ontario, called "Indian Territories." It would seem after the cession by the French Crown to the British Crown of territorial rights in North America, by the Treaty of Paris, in 1763, and the establishment first of the Province of Quebec and subsequently of the Provinces of Lower Canada and Upper Canada, that there were extensive regions not comprehended

in Rupert's Land and beyond the boundaries of the two Canadas, in which crimes and offences were committed, and which were not within the limits of the jurisdiction of any Courts, or any civil government, and beyond the cognizance of any jurisdiction whatever, and by reason thereof great crimes and offences had gone, and would continue to go, unpunished, and would greatly increase. (Preamble to 43 Geo. III, C. 138, 1803) whereupon the Parliament of Great Britain passed the Act 43 Geo. III, C. 138, intituled :

"An Act for extending the juristiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces."

The first section of this Act provides :

"That from and after the passing of this Act, all offences committed within any of the Indian territories or parts of America not within the limits of either of the said Provinces of Lower or Upper Canada, or of any civil government of the United States of America, shall be and be deemed to be offences of the same nature, and shall be tried in the same manner and subject to the same punishment as if the same had been committed within the Provinces of Lower or Upper Canada."

The second section provides :

"That it shall be lawful for the Governor or Lieutenant-Governor, or person administering the Government for the time being of the Province of Lower Canada by commission under his hand and seal, to authorize and empower any person or persons wheresoever resident or being at the time, to act as Civil Magistrates and Justices of the Peace for any of the Indian territories or parts of America not within the limits of either of the said Provinces, or of any civil government of the United States of America, either upon information taken or given within the said Provinces of Lower or Upper Canada or out of the said Provinces in any part of the Indian territories or parts of America aforesaid, for the purpose only of hearing crimes and offences and committing any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to the said Province of Lower Canada to be dealt with according to law ; and it shall be lawful for any person or persons whatever to apprehend and take before any person so commissioned as aforesaid, or to apprehend and convey or cause to be safely conveyed with all convenient speed to the Province of Lower Canada any person or persons guilty of any crime or offence there to be delivered into safe custody for the purpose of being dealt with according to law."

The third section in substance provides for the trial of offenders in Upper Canada if the Governor of Lower Canada, from any circumstances of the crime or offence, or the local situation of witnesses for the Crown or the defence, should think the trial could more conveniently take place and Justice be more conveniently administered in relation to such crime or offence in Upper Canada than in Lower Canada—clothing the Courts with power of punishment and with authority to enforce the attendance of witnesses.

Section four directs that if the offender be not a British subject, or the offence be committed in any colony, settlement or territory belonging to any European state he shall be acquitted.

The remaining section, however, declares that if the offender be a subject of His Majesty, although the offence may have been committed in some colony settlement, or territory belonging to some European State, he shall, nevertheless, be tried as in other cases.

I am thus particular in referring to all the provisions of this Act inasmuch as subsequently by direct enactment it is made applicable to Rupert's Land, or what is commonly called the Hudson Bay Territory. Although this Act is very general and comprehensive in the description of the territory to which it was intended to apply, it is supposed its language would not necessarily include Rupert's Land.

On the trial of De Reinhard and Archibald McLellan for the murder of Owen Keveny at a place called Dalles, on the river Winnipic, near the North-West Angle of the Lake of the Woods, and within Rupert's Land, before Chief Justice Sewell at Quebec in 1818, the question of the geographical boundary of Upper Canada was much discussed;

and although De Reinhard was convicted of murder the verdict was never carried into execution; not as it is apprehended on the ground urged at the trial, that the Courts in Upper Canada had sole jurisdiction over the offence because of its having been committed within the geographical limits of Upper Canada, as defined by the Act of 1791 and the King's proclamation issued in pursuance thereof, but on the ground that the offence was committed, not with the "Indian Territories" referred to in 43 Geo. III, chap. 138, but within Rupert's Land, to which it was doubtful if on a strict construction the Act had any application.

Accordingly we find that shortly thereafter, in 1821, was passed the Imperial Act 1 and 2 Geo. IV, chap. 66, intituled:

"An Act for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain part of North America."

As giving an historial glimpse of the unsettled state of affairs in the Indian Territories and other parts of British America adjoining the Provinces of Lower and Upper Canada, and of the feuds and animosities existing between the North West Company and the Hudson Bay Company, and as throwing light upon the proper interpretation of 43, Geo. III, chap. [N.B.—Then appears to be an omission here.]

It would appear from the declarations in the Acts to which I have referred that though authority was given the Crown to set up Courts of Record in the Indian Territories and other parts of America, and in Rupert's Land, none such were established by the Crown as late as 1859, and I think it quite safe to say none were constituted by the Crown down to the time of the transfer of all these territories to Canada in 1870 by the Order in Council of the 23rd of June, which took effect on the 15th of July of that year, in pursuance of the Imperial Act called "Rupert's Land Act, 1868," 31 and 32 Vic., chap. 105.

Although the Crown did not establish any Courts yet it appears the Hudson Bay Company, by virtue of the powers conferred on it by its charter, as far back as 1839, constituted its factors and others in its employ, Justices of the Peace in Rupert's Land and in other parts of the North West Territories where it had trading posts, who exercised both civil and criminal jurisdiction in small claims and in minor offences in a summary manner in the respective district in which they were stationed; and also about the same time established a Court of Record called the "General Court of Assiniboia" the seat of which was at Winnipeg, with a geographical jurisdiction which does not seem to have been strictly defined and having cognizance and jurisdiction of all civil claims and demands, of whatever nature or amount the same might be, and of all crimes, misdemeanors, and offences whatsoever, with all the powers necessary to enforce its judgments, orders, decrees, and sentences in both civil and criminal matters, even to the extent of inflicting capital punishment. The Company appointed Mr. Adam Thorn the first Judge of this Court, with other officers, in or about the year 1839. The sole authority and basis of this Court and its officers rested upon the powers conferred on the Company by the charter granted it in the reign of King Charles the Second, but on no legislative enactment whatever. Mr. Thorn presided over this Court till about the year 1851. After his retirement Mr. Johnston, of Montreal, now a Judge in the Province of Quebec, was appointed Judge, who, having for some years discharged the duties of his office, retired, and was succeeded by Mr. Black, who was the Judge in 1869-70 when the difficulties occurred at Winnipeg out of which arises the offence charged in this indictment. It would therefore appear that this Court, with its judges and officers, in 1870, had been in existence for thirty years, trying civil cases to any amount whatever, and exercising criminal jurisdiction even to the extent of inflicting capital punishment (for in one instance, at least, a person was tried for murder, convicted, and executed), without its basis or jurisdiction ever having been formally and authoritively questioned by the Imperial Government. On the contrary, by the last clause of "Rupert's Land Act, 1868," the validity of this Court and the legality of its jurisdiction over capital offences, which were then well known to the Government and Parliament of England (see proceedings of

committee on Hadson Bay Company, House of Commons, 1857), and of its officers, and of the magistrates and justices then being in Rupert's Land, seem to be fully recognized and admitted. It says :

" It shall be competent to Her Majesty by any such order as aforesaid (Order in Council for admission of Rupert's Land), on address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada ; and thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain, and establish within the land and territory so admitted as aforesaid all such laws, institutions and ordinances, and to constitute such Courts and officers as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein ; provided that until otherwise enacted by the Parliament of Canada, all the powers, authorities, and jurisdiction, of the several Courts of Justice now established in Rupert's Land, and the several officers thereof, and of all magistrates and justices now acting within the said limit, shall continue in full force and effect therein. "

Attention is called to the words of the proviso in this section. To what " Courts and officers thereof " do they refer? The Crown had established no " Court " or " officers thereof " in Rupert's Land. It may have appointed some Justices of the Peace, but even that is doubtful. The only Court then existing in Rupert's Land was " the General Court," established by the Hudson Bay Company under its royal charter, and the only " Officers thereof " were those appointed by that Company, and I think I may safely say, if not all, nearly all, " the magistrates and justices then acting or being within the said limits," in like manner derived their authority from and were appointed by the Hudson Bay Company which by its charter had power and authority,

" From time to time to assemble itself for or about any of the causes, affairs or businesses,of the said trade in any place or places for the same, convenient within the Dominions or elsewhere, and there to hold Court for the said Company and the affairs thereof, and to make, ordain, and constitute such and so many reasonable laws, constitutions, orders and ordinances, as should seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts, and plantations, factors, masters, mariners or other officers employed, or to be employed, in any of the territories and lands aforesaid ; and for the better continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly ; and at its pleasure to revoke and alter the same, or any of them as the occasion should require ; and should and might impose, ordain, limit, and provide such pains, penalties and punishment upon all offenders contrary to such laws, constitutions, orders, and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his deputy, being always one should seem necessary, requisite or convenient, for the observation of the same laws, constitutions, orders, and ordinance ; and the same fines and amerciaments should by its officers and servants in that behalf levy, take and have, to the use of the said Company, without the empediment of the Crown, and without any account thereof to be made to the Crown ; and all and singular the laws, constitutions, orders, and ordinances, so as aforesaid to be made, His Majesty did, will, should be duly observed and kept, under the pains and penalties therein to be contained ; so always as the said laws,constitutions, orders and ordinances, fines and amerciaments were reasonable, and not contrary or repugnant, but as near as might be agreeable, to the laws, statutes or customs of the realm."

" And all the lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories or trade might or should be, within any of the forts or places afore limited, should be immediately and from thenceforth under the power and command of the said Company (saving the faith and allegiance due to be performed to His Majesty, his heirs and successors) and the said Company were given liberty, full power and authority to appoint and establish governors and all other officers to govern them, and the governor and his council of the several and respective places

where the said Company should have plantations, forts, factories, colonies, or places of trade, within any of the countries, lands or territories thereby granted might and should have power to judge all persons belonging to the said Company, or that should live under it, in all causes, whether civil or criminal according to the laws of the Kingdom of England, and to execute justice accordingly ; and in case any crime or misdemeanor should be committed in any of the Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature could not be executed for want of a governor and council there, then in such case it should and might be lawful for the chief factor of that place and his council, to transmit the party together with the offence to such other plantation, factory or fort where there should be a governor and council, or into the Kingdom of England, as should be thought most convenient, there to receive such punishment as the nature of his offence should deserve."

And these rights, powers, authorities and jurisdictions, were in no way revoked, abridged, superceded, or limited by any Act of the Parliament of England; on the contrary, in the Act 1 and 2 Geo. IV, c. 66, and in the concluding and last section thereof, it is enacted and declared :

"That nothing in this Act contained shall be taken or construed to affect any right, privilege, authority or jurisdiction which the governor and company of adventurers trading to Hudson's Bay are by law entitled to claim and exercise under their charter ; but all such rights, privileges, authorities and jurisdictions shall remain in as full force, virtue and effect as if this Act had never been made ; anything in this Act to the contrary notwithstanding." And in the concluding and last section of 22 and 23 V. c. 26 (1859) it is enacted and declared that " nothing herein contained shall extend to the Territories heretofore granted to the Company of Adventurers trading to Hudson's Bay."

Therefore, notwithstanding that by the Imperial Act of 1803, which gave criminal jurisdiction to the Courts of Lower and Upper Canada within the Indian Territories and other parts of North America, and made provision for the apprehension and transmission of offenders to those Provinces for trial and punishment, and nothwithstanding that by the Imperial Act of 1821, the Act of 1803 was extended and made applicable to Rupert's Land, and further provision was made for the administration of justice, both criminal and civil, the Crown taking power to appoint Justices of the Peace to act as such, as well in the Hudson Bay Territory as in the Indian Territories and other parts of North America, and to constitute such justices a Court of Record to try civil causes where the recovery should not exceed two hundred pounds, and to hear and determine criminal offences where the punishment inflicted was not death or transportation ; nevertheless the Courts of Lower and Upper Canada had only a concurrent, not an exclusive jurisdiction : for the Act 1 and 2, Geo. IV. c. 66, conferring jurisdiction in Rupert's Land (the Hudson Bay Territory) on the Canadian Courts, and giving power to the Crown to appoint justices and establish a Court of Record therein, explicitly enacts and declares " That the rights, privileges, authorities, and jurisdictions of judicature granted to the Hudson Bay Company by its Royal Charter, should not be in any way affected by anything in that Act contained, but should remain in as full force, virtue and effect, as they would if that Act had not been passed. "

Again I do not think it can be successfully contended that, " The Supreme Court" established by the Manitoba Act (34 Vic., chap. 2) was not clothed with jurisdiction over all criminal as well as civil matters arising or existing in the Province of Manitoba, or in the territory which had then become that Province at the time it was passed, independent of 34 Vic., chap. 14, sec. 2, altogether ; for by section 92, sub-section 14, of the British North America Act, 1867, " the administration of justice in the Provinces, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction, including procedure in civil matters in those Courts, belongs exclusively to the Legislature of the several Provinces. In this Act the legal existence and extensive jurisdiction of the General Court established as I have mentioned by the Hudson Bay Company, are fully recognized, Section 39 says :

"Till a Judge of the Supreme Court of the Province shall be appointed by the Government of the Dominion of Canada, the General Court, sitting in this Province shall exercise throughout the Province all the functions and possess all the authority hereby conferred on the Supreme Court; and all the provisions of this Act respecting the Supreme Court; and all the provisions of this Act respecting the Supreme Court shall apply in like manner and to the same extent for all purposes whatever to the said General Court and to the Judge and Officers thereof, and to all suitors therein, and to the attendance of Jurors, grand and petit thereat, and to all proceedings in the said Court, in as full and ample a manner as if such provisions had been made in express reference to the said General Court."

Section 41 says:—

"From and after the appointment as aforesaid of a Chief Justice of the Supreme Court all cases pending in the General Court in the last section mentioned shall be transferred to the said Supreme Court in the same state and condition as they may there be, and shall be treated in all respects as if they had been commenced and carried on in the Supreme Court."

Section 41 says:—

"Judgments of the General Court in the last two preceding sections mentioned shall be enforced, set aside, or otherwise dealt with in all respects as if they were judgments of the Supreme Court."

This Act, as I have said, fully recognizes and admits the legal existence of the General Court, with a jurisdiction both civil and criminal as extended as that of the Supreme Court, which it established, and it substituted or continued the General Court with its extended jurisdiction over all matters, civil and criminal, arising or existing within the Province, and within the territory which had become the Province, until by the appointment of a Chief Justice of the Supreme Court by the Government of Canada, the latter Court should be organized and brought into operation.

This Act of the Manitoba Legislature was passed on the 12th of May, 1871. Prior to the passing of this Act, on the 14th of April, 1871, the Parliament of Canada, under the authority of "The British North America Act, 1867," and "Rupert's Land Act, 1868," had passed the Act, 34 Vic., chap. 14, to extend to the Province of Manitoba certain of the criminal laws then and now in force in the other Provinces of the Dominion, and by the Second Section thereof it is declared and enacted that:

"The Court known as the General Court (the Court established by the Hudson Bay Company) heretofore existing in the Province of Manitoba, and any Courts to be hereafter constituted by the Legislature of the said Province, and having the powers now exercised by the Said General Court, shall have power to hear, try and determine, in due course of law, all treasons, felonies, and indictable offences committed in any part of the said Province or in the Territory which has now become the said Province."

Simply reiterating what was already declared to be the fundamental law of the Province by sec. 92, sub-section 14 of "The British North America Act, 1867."

It would, therefore, appear to follow that when the offence charged in the indictment was committed (the 4th March, 1870) the General Court established by the Hudson Bay Company had jurisdiction over the crime; and that by the last clause of "Rupert's Land Act, 1868," such jurisdiction was continued down to the 15th of July, 1870, the time of the transfer of the territories to Canada and the formation of the Province of Manitoba (33 Vic., chap. 3, Statutes of Canada), and thence on (34 Vic., Chap. 2, Sections 39, 40 and 41, Statutes of Manitoba) until the Supreme Court of Manitoba, now called the Court of Queen's Bench was organized and brought into operation by the appointment of a Chief Justice thereof, an event which took place in the autumn of 1872, by the appointment to that office of the Hon. Alexander Morris, and from that time, and by that Act, and by the direct and express declarations of the several Acts to which I have referred, as well Imperial as Canadian and Provincial, unquestionable jurisdiction over, and power and authority to hear, try, and determine in due course of law as well the offence charged in the indictment, as also "all treasons, felonies, and indictable offences com-

mitted in any part of the said Province, or in the territory which has now become the said Province," were given to, conferred upon, and vested in the Court of Queen's Bench, in which this indictment was found, and in which I am now sitting.

It has been argued that the General Court of Assiniboia had not at the time of the committing of the offence charged in the indictment, power and authority to hear, try, and determine capital felonies. For the reasons I have given I think it had. However that may be, it can in no wise affect the conclusion at which I have arrived, based as it is on the express power given to the Court by the Canadian Act (34 Vic., Chap. 14, Sec. 2) which Act is authorised by the Imperial Statute called Rupert's Land Act, (31 and 32 Vic., Chap. 105, Sec. 5); and although passed on the 14th April, 1871, and now on the Statute Book for upwards of three years, has not been disallowed or questioned by the Imperial authorities as being *ultra vires* or otherwise objectionable.

On the argument it was suggested that the second section of this Act was *ultra vires*, *ex post facto* and *retroactive;* and therefore unconstitutional. It is expressly authorized by the Imperial Rupert's Land Act, 1868, and cannot be said to be *ultra vires*. I am unable to see in what respect it is either *ex post facto* or *retroactive*. It does not make or create any new offence. It does not make that an offence which, when it was done, was no offence. Every British Colony, wherever it may be planted, and all the members of it, unless the contrary is manifested by express Act of Parliament, carry along with them, and are protected by, and subject to the Common Law of England. By the Common Law, who so being of sound mind, with malice aforethought, taketh the life of a human being in the Queen's peace, is guilty of murder, and death is the penalty. That is the offence charged in the indictment. The Statute does not make that a crime which, before it was passed, was no crime. It does not introduce any new rules or new principles of evidence or procedure, by which that, which according to the Common Law, is murder, shall be heard, tried, and determined. It simply points out the Court which, in accordance with due course of Law, shall hear, try and determine the offence charged, the guilt or innocence of the prisoner. Seemingly from an apprehension that some objection of this sort might be raised, the Statute itself settles the question for ever. Sec. 6, 34 Vic., Chap. 14, says:—

"All provisions of Law heretofore in force in the country now constituting the Province of Manitoba inconsistent with or repugnant to any of the Statutes enumerated in the first section of this Act are hereby repealed: *provided always that no person shall, by reason of the passing of this Act, be liable to any punishment or penalty for any act done before the passing thereof, for which he would not have been liable to any punishment or penalty under the Laws in force in the said Province or Territory now constituting it at the time such act was done; nor shall any person by reason of the passing of this Act be liable to any greater or other punishment for any offence committed before the passing thereof than he would have been liable to under the laws then in force as aforesaid; and this Act, and and the Acts hereby extended to the said Province shall apply only to the procedure in any such case, and the penalty or punishment shall be the same as if this Act had not been passed.*"

I, therefore, fail to see any ground whatever for questioning that this Court has jurisdiction of the offence charged in the indictment.

There is another aspect of the case which leads to the same conclusion, and which it may not be inappropriate to glance at, to settle the public mind on a much vexed question.

The Imperial Act 43, Geo. 3, c. 138, provides that the Governor of Lower Canada might under his hand and seal, issue commissions, appointing any person or persons, wheresoever resident or being at the time, to act as civil magistrates or justices of the peace for any of the Indian territories or parts of America not within the limits of either Lower or Upper Canada, or of any civil Government of the United States of America, either upon information taken or given in either of the Provinces of Lower or Upper Canada, or out of those Provinces in any part of the Indian territories or other parts of America, for the purpose only of hearing crimes and offences, and committing

any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to Lower Canada to be dealt with according to law; and it was made lawful for any persons whatever to apprehend and take before any persons so commissioned by the Governor of Lower Canada, or to apprehend and convey, or cause to be conveyed with all convenient despatch to Lower Canada any person or persons guilty of any crime or offence, there to be delivered into safe custody for the purpose of being dealt with according to law.

It was declared by the Act that all offences committed within the territories and places referred to, should be deemed to be offences of the same nature, and should be tried in the same manner and subject to the same punishment as if the same had been committed in the Province of Upper or Lower Canada respectively.

Every offender was to be prosecuted and tried in the Courts of the Province of Lower Canada, or, if the Governor of Lower Canada should, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence think that justice might be more conveniently administered in relation to such crime or offence in the Province of Upper Canada, and should by any instrument under the Great Seal of the Province of Lower Canada, declare the same, then every such offender might and should be prosecuted in the Court of Upper Canada.

Here, in the year 1803, we have the Governor of Lower Canada empowered as an Imperial officer, by commision under his hand and seal, to appoint magistrates and justices of the peace wherever they might be or reside, for the purpose of handing over offenders in the Indian territories and other parts of North America for trial by the Courts of Lower Canada, or if the Governor should think it more convenient, and should so declare under the great seal of the Province of Lower Canada, by the Court of Upper Canada.

Indeed, any person, whether so appointed or not, was authorized to apprehend and to transmit all persons charged with any crime or offence to the authorities of Lower Canada, to be dealt with in the manner indicated according to law.

Now, it will be observed that the appointment of magistrates and justices for the purposes mentioned was an executive act, and rested solely with the Governor of Lower Canada, as an Imperial officer in his relation as such to the Government of Lower and Upper Canada (there then being only a Lieutenant-Governor of Upper Canada) and in direct communication with, and receiving his instructions directly from, the Imperial authorities, and was to be performed by an instrument under his hand and seal, not under the great seal of the Province, but when he came to deal with the question of directing any offender to be tried by the Court in Upper Canada, it being an act of administration within the Province that was to be performed under the great seal of the Province. Considering that the Government of a country embraces the Executive and his duties, the Legislature and its duties, the Courts of Justice and their duties, with such ministers and officers and their deputies as may be necessary, it is manifest that in the present case both duties, the one Imperial and Executive, the other Provincial and Administrative, equally related to the Government of the Canadas.

It will be further observed from what has already been said, that this Act did not apply to Rupert's Land (the Hudson Bay Territory), a portion of which on the 15th of July, 1870, became and now is the Province of Manitoba.

By the Imperial Acts 1 and 2, George 4, c. 66 (1821), among other things, 43 Geo. 3, c. 138, with all its clauses and provisions was, in express terms, made applicable to Rupert's Land, or to the lands and territories, by the charter of Charles the Second, granted to the Hudson Bay Company, still leaving with the Governor of Lower Canada the power of appointing magistrates, etc., as before.

From that time the Governor of Lower Canada had the Imperial Executive authority in Rupert's Land, and the Provincial administrative authority in the Province of Lower Canada, in relation to the Government of Upper and Lower Canada as I have mentioned; and the Courts in Lower Canada and the Court of Upper Canada had jurisdiction, concurrent, not exclusive, as has already been shown, of "all offences committed" in Rupert's Land;

and the Governor continued to possess such authority, and the Courts such jurisdiction, unaffected by any legislative enactment, till the tenth day of February, 1841, when the Imperial Act for uniting the Provinces of Upper and Lower Canada, and for the Government of Canada, passed in 1840 (3 and 4 V., c. 35), came into operation, and the Provinces of Upper and Lower Canada became the Province of Canada.

But this Act declared and enacted that:—

"All powers, authorities and functions which by the said Act, passed in the thirty-first year of the reign of His Majesty King George the Third, or by any other Act of Parliament, or by Act of the Legislature of the Provinces of Upper and Lower Canada respectively, are vested in, or are authorized or required to be exercised by the respective Governors or Lieutenant-Governors of the said Provinces, with the advice, or with the advice and consent of the Executive Council of such Provinces respectively, or in conjunction with such Executive Council, or with any number of members thereof, or by the said Governors or Lieutenant-Governors individually and alone, shall in so far as the same are not repugnant to or inconsistent with the provisions of this Act, be vested in and may be exercised by the Governor of the Province of Canada, with the advice, or with the advice and consent of, or in conjunction, as the case may require, with such Executive Council, or any members thereof, as may be appointed by Her Majesty for the affairs of the Province of Canada, or by the said Governor of the Province of Canada individually and alone, in cases where the advice, consent or concurrence of the Executive Council is not required." (Sec. 45.)

"All the Courts of civil and criminal jurisdiction within the Provinces of Upper and Lower Canada, at the time of the union of the said Provinces, and all legal commissions, powers and authorities, and all officers judicial, administrative or ministerial, within the said Provinces, respectively, except in so far as the same may be abolished, altered or varied by, or may be inconsistent with, the provisions of this Act, or shall be abolished, altered or varied by any Act or Acts of the Legislature of the Province of Canada, shall continue to subsist within those parts of the Province of Canada which now constitute the said two Provinces respectively, in the same form, and with the same effect as if this Act had not been made, and if the said two Provinces had not been re-united as aforesaid." (Sec. 46.)

From the Union of the Provinces to Confederation (1st July, 1867) the Governor General of the Province of Canada was vested with and possessed, and it became and was his duty to exercise, all the Imperial executive authority in Rupert's Land and the Province of Canada, in relation to the Government of the Province of Canada, and the Courts in Lower and Upper Canada, continued to possess and enjoy, and were capable of exercising, all the jurisdiction over all offences committed in Rupert's Land, that were respectively vested in, and possessed by, the Governor of Lower Canada, and that were possessed, enjoyed, and capable of being exercised by, the Courts of Lower and Upper Canada before the Union, unaffected in any manner whatever by the Imperial Act 22 and 23 V., c. 26, (1859) or by any other Act, Imperial or Provincial.

"The question now is, what became of this Imperial executive and administrative power and authority, and of this jurisdiction of the Courts of the Province of Canada on Confederation? It has been argued that it ceased altogether or reverted back to the Crown in England, and therefore could be exercised only by the Imperial authorities and the criminal Courts of England; and this argument is based entirely on the phrase, "In relation to the Government of Canada," in the 12th sec., and the phrase, "in relation to the Government of Ontario and Quebec respectively," in the 65th section of "The British North America Act, 1867." These sections are substantially the same in phraseology and are substantial copies of section 46 of the Union Act of 1840, which has been quoted in full—the only difference being in the words, "in relation to the Government of Canada, in the former, and "in relation to the Government of Ontario and Quebec respectively" in the latter. It is admitted that had these phrases been omitted, or in other words, had these sections been precisely in the words of section forty-six of the Union Act of 1840, the power and authority of the Governor General of Canada, and of

the Courts of Quebec and Ontario in respect of offences committed in Rupert's Land, would have remained and continued just the same after as before Confederation ; but it is argued that the Imperial Parliament having in view the further acquisition by Canada of Rupert's Land and the North-west territories, introduced these phrases with the intention of taking from the Executive of Canada these powers and authorities, and from the Courts of Ontario and Quebec, this jurisdiction. If this were the intention of Parliament, it seems to me it might easily have found words, phrases, and language more fitting expressive of its meaning. Is not this giving a strained construction to the statute, unsupported by any substantial reason and contrary to the express declarations of other parts of the Act ? Is it not manifest, on a moment's reflection why the phrases in question were used ? These two sections (12 and 65) were dealing with the Imperial executive and Canadian administrative and ministerial powers and authorities of the Governor General of Canada in respect of all matters and duties delegated to, and imposed upon him in "relation to the Government of Canada" that is, all matters and duties which were general, not local, and which related to all the provinces alike, but to none in particular, *on the one hand*, and to the Provincial executive, administrative and ministerial powers and authorities, which from their limited and circumscribed nature, and their local application, were to be exercised only in reference to such matters and duties as were required to be done, in relation to the Government of the provinces respectively, *on the other hand*, and to draw a line between the executive duties of the Governor General, an Imperial Officer, and in direct correspondence with the Crown, through its Imperial ministers and those of the Lieutenant-Governors of the Provinces, holding their appointments from, and being responsible to, and in correspondence only with, the Governor General, the phrases referred to were properly used ; and it was necessary that these or similar words should be employed to mark the respective executive, administrative and ministerial powers and authorities of each. Neither of these sections has any relation to the Courts of Upper and Lower Canada, Ontario and Quebec. I therefore fail to see how any argument can be derived from them that the Act of Confederation swept away the jurisdiction of those Courts over offences committed in Rupert's Land and in the North-West Territories, the only question that can be raised is, "had the Governor General after Confederation the executive power of appointing magistrates, etc., in Rupert's Land and other parts, to take informations, etc., and transmit offenders for trial and punishment to the Courts of Ontario and Quebec ?" It is quite clear that neither the Lieutenant-Governor of Ontario nor of Quebec had any such power ; and I think it equally clear for the reasons given and for many others which might be mentioned, the Governor General had such power until the transfer of Rupert's Land and the North-west territories, and the establishment of the Province of Manitoba --events which took place on the 15th day of July, 1870—and therefore, during, at the time, and after, the crime charged in the indictment was committed. And from the 129th and 130th sections of the Confederation Act, apparently overlooked by Counsel on the argument, the 129th being almost if not quite an exact copy of section 47 of the Union Act of 1840, which says:

"129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction and all legal commissions, powers and authorities, and all officers, judicial administrative and ministerial, existing therein at the Union shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made ; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished or altered by the Parliament of Canada, or by the Legislatures of the respective Provinces, according to the authority of the Parliament or of that Legislature under this Act.

"130. Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes or subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be officers of Canada, and shall continue to discharge the duties of their

respective offices, under the same liabilities, responsibilities and penalties as if the Union had not been made."

And section 5 of "Rupert's Land Act, 1868," which says :

"It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on address from the Houses of Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada from the date aforesaid, to make, ordain and establish within the land and territory so admitted as aforesaid, all such laws, institutions and ordinances, and to constitute such Courts and officers, as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein; provided, until otherwise enacted by the said Parliament of Canada, all the powers, authorities and jurisdiction of the several Courts of justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and justices now acting within the said limits, shall continue in full force and effect therein."

I think it unquestionable that the jurisdiction of Ontario and Quebec continued over offences committed in Rupert's Land and the Northwest Territories, and, therefore, over the crime charged in the indictment; and that all the magistrates, etc. acting or being within those limits, had power and authority, and it was their duty, to apprehend and bring to trial, either in the Court Assiniboia, or in the Courts of Ontario or Quebec, all persons who had committed crimes or offences within their respective jurisdictions, and, therefore, those persons who were charged with the murder of Thomas Scott—certainly until the transfer of Rupert's Land, and a portion of it was formed into the Province of Manitoba, and it may be, until the passing of the Canadian Act of 1871 (34 V., c. 14), whereby it is declared that :—

"The Court known as the General Court now and heretofore existing in the Province of Manitoba, and any Court to be hereafter constituted by the Legislature of the said Province, and having the powers now exercised by the said General Court, shall have power to hear, try and determine in due course of law, all treasons, felonies and indictable offences committed in any part of the said Province, or in the territory which has now become the said Province."

At the Confederation of the Provinces—certainly at the passing of this Act—the concurrent jurisdictions of the Canadian Courts over crimes and offences committed in the territory which afterwards became the Province of Manitoba, ceased and was at an end, and the Courts then existing or subsequently established in Manitoba had and have exclusive cognizance of and jurisdiction over all crimes and offences in Manitoba, originating in the territory now forming that Province, whether committed before or after the establishment of the Province. There has then been no interruption or jurisdiction or want of authority in Courts existing in North America, to hear, try and determine all crimes and offences committed within the territory now forming the Province of Manitoba, but all such crimes might have been *before* the Province was established, in Courts *then* existing, and by officers *then* clothed with full authority in that behalf, and *may now*, in the Court of Queen's Bench duly organized in Manitoba, be heard, tried and determined in due course of law, and punishment awarded accordingly.

The demurrer to the plea of jurisdiction is allowed. The prisoner is permitted to enter a plea of "Not Guilty."

THE QUEEN
against
AMBROISE LEPINE.

IN THE COURT OF QUEEN'S BENCH.

Report of the Trial of Ambroise Lepine, in the Court of Queen's Bench, held at the Court House in the City of Winnipeg, on the tenth day of October, 1874, for the murder of Thomas Scott, on the fourth day of March, 1870, at Fort Garry, in that portion of Rupert's Land which has since become the Province of Manitoba.

TUESDAY, October 13th, 1874.

Mr. Cornish appeared for the Crown, and Messrs. Chapleau and Royal for the prisoner.

The Jury having been chosen and sworn according to law, without any question having been raised by either party, Mr. Cornish opened the case for the Crown and then proceeded to call his witnesses. (On motion the witnesses on both sides having been excluded from the Court Room.)

(Here follows the evidence.)

Mr. Royal addresses the Jury in English at considerable length, and is followed by Mr. Chapleau in French, who goes elaborately into all the grounds of defence suggested by the evidence both verbal and documentary; after which Mr. Chapleau submits to the Court—

1. There is no evidence to go to the Jury of the actual death of Scott by reason of what is alleged to have taken place on the 4th March, 1870, at or near Fort Garry, as charged in the indictment and given in evidence—inasmuch as no one has stated that he saw Scott's dead body, and inasmuch as no one has given any account, if dead, what has become of the body, and as the body has not been found, nor accounted for, it is not competent for the Jury to find the fact of his death, and he asks the Court to rule accordingly. In support of this motion Mr. Chapleau cites Teabs' Pleas of the Crown, No. 290; Arch. Crim. pleading 238-622; Taylor's Ev. 199; Phil. Ev. 613, as to direction to the Jury in cases of doubtful proof, Phil. Ev. 640-641. Miles' case is cited and commented upon, as also the rules applicable as to death, presumptions commented on. The best evidence possible had not been given. Mr. Young's evidence on this point not satisfactory. That of an expert should have been given, Phil. Ev. 778. The Crown should have produced a surgeon to prove the wounds described by the other witnesses were likely to produce death. All the wounds mentioned may have been given, and yet not produce death. Taylor's Med. Peris. 275-2; Beak's Med. Peris 121, *et seq.* It is not for the prisoner to account for Scott or his body, but for the Crown to do this.

2. The Court should direct the Jury to acquit the prisoner of the offence charged because he acted and did what is alleged, if he acted and did anything, under the authority of and in obedience to a Government *de facto*, recognized by the Sovereign authority at Ottawa, or its representatives duly empowered in that behalf, and in execution of the desire of such *de facto* Government; and, in any event, if amenable at all for any offence, it would be high treason for which the prisoner should first be tried, if tried at all. Benlay McRee 5-7; Vattel's L. N. 97.

3. This Court has no jurisdiction over the offence charged in the indictment. Mr. Chapleau raised this objection so that it shall not be taken that he waives this objection. He desires liberty to raise it elsewhere if need be, notwithstanding the judgment of this Court given on the demurrer to the plea to the jurisdiction delivered to, by the Chief Justice last term (a copy of this judgment is hereto appended marked Z.)

4. The Court should direct the jury that the acts of the surveyors were unlawful acts, as was the attempted entrance of McDougall into the country as its Governor, that the arming by Col. Dennis, although said to be to preserve the peace and protect property, was unauthorized by any legal authority and unlawful, that this, if allowed by McDougall's proclamation, an unauthorized act, and his commission to Col. Dennis so extraordinary and incendiary in its terms, and his proclamation issued thereunder, all illegal and unwarrantable acts, fully justified all that followed—the Convention of November, that of the 25th of January, and that of the month of March, the adoption of the three several bills of rights, the taking of the prisoners at Schultz's premises, and those taken on the prairie, their detention as a pledge of safety, the establishment of the Provisional Government by the Convention of the 25th of January, the choosing of Executive Officers and Riel as President or Chief Executive, especially as Governor McTavish had abdicated his functions, having been forced to do so by the proclamation of McDougall, by which he was shorn of his physical and moral power although not of

his legal power, and that, as a consequence, the existence of that Provisional Government all of which taken together constitute a full defence and a complete answer to the offence charged in the indictment, and all other acts done in obedience to the orders and decrees of that Government.

The Court—The death of Scott is a question of fact, and must be determined by the jury.

I shall tell the jury that in my opinion no evidence has been given in any way proving the existence of either a *de jure* or a *de facto* government, and it will be for the jury to adopt my view of the law, or not, as they may be bound by their consciences, for the jury may reject even the opinion of the Court in a question of law if they choose to do so. But I shall tell them very plainly what I think the law is on this question.

This Court has already settled the question of jurisdiction. It is, therefore, unnecessary for me to make any observation in respect of this objection. It is not unnoteworthy that this Court in giving judgment on the demurrer to the plea to the jurisdiction took the view taken by the law officers of the Crown in England in regard to the concurrent jurisdiction of the Canadian Courts and the General Court of Assiniboia, over the offence charged in the indictment, although the existence of that despatch was at that time unknown to the Court. I refer to the despatch published in the report of the Committee on the North West difficulties.

The fourth proposition of the Counsel for the prisoner is involved in the first. I shall not direct the jury as requested. I shall carefully examine the evidence bearing upon the several matters suggested in this proposition, and shall give my opinion of the law applicable to the facts, and in connection with this I shall ask the jury to say, even supposing the existence of a *de facto* Government, whether or not any offence was committed by Scott for which such a Government could put him to death.

Mr. Cornish objects that the Counsel for the prisoner, after having addressed the jury, one in English and the other in French, is now seeking by an argument to the Court to make still another speech to the jury.

The Court—This is a case where the prisoner is on his trial for his life, and I feel disposed to give the learned Counsel for the prisoner the widest latitude consistent with the ends of justice. I will, therefore, permit Mr. Chapleau to argue all the points raised by him to the jury, as his address to them was in French. Mr. Chapleau then argued these questions raised by him at considerable length to the jury. After the conclusion of Mr. Chapleau's address Mr. Cornish entered upon a general discussion of the whole case, and summed up for the Crown, followed by Mr. McDonald on the same side, in French.

I charge the jury in substance as follows :—

1. Was Scott killed or put to death at Fort Garry, on the 4th of March, 1870—and if so was that killing or putting to death, murder—and was the prisoner at the bar so implicated in that killing or putting to death as to render him guilty of the crime charged in the indictment?

2. Are there any facts or circumstances detailed in the evidence, verbal or written, which can justify or excuse that killing or homicide. Was the killing done by such an authority and for cause under that authority which in law would make it justifiable homicide in those immediately concerned in doing it?

Under the second proposition I briefly noticed the principal occurrences as established in evidence up to the 4th March, 1870, and reviewed the evidence of what transpired on the evening of the third and the day of the 4th of March, 1870, and I closed with telling the jury that I saw no evidence of the existence of any government whatever, having, or truthfully pretending to have, or to rest upon, the suffrages of the people of Red River, as a basis of its existence. That no evidence had been given which according to law proved the existence of a government, clothed with the attributes of sovereignty, either *de facto* or *de jure*. But I told the jury that while I stated this to them as a matter of law, and that while it was the duty of the jury to take the law from the Court, nevertheless it was in their power, and it was their duty if they conscientiously thought the Court in error to reject the law laid down, and find as they thought right, for the Court had no absolute power over their judgments or consciences. I then assumed the existence of what

on the trial was called a Provisional Government, and then said if such a government did exist and Scott was its prisoner it was bound at least by the law of nations not to put him to death except for *some* cause, and if this government took the place as was contended of the Government of Assiniboia, it was bound by the common law of England. No cause or ground whatever had even been suggested by any of the witnesses for the Crown or for the prisoner, or even by the learned counsel for the prisoner for taking Scott's life, and that assuming the killing,and that the prisoner was so implicated in that killing as to render him guilty under the indictment, it was a wanton, brutal murder without any justification, even supposing there was a government *de facto* taking the place and assuming the position of the Government of the Hudson Bay Company. Under the first proposition I called the attention of the jury to all the evidence bearing upon the question whether or not Scott come to his death about or near the 4th March, 1870, by reason of what was done to him, the firing of the guns, the pistol and what else, if anything, was done, and read to them portions of the letter of Riel and the prisoner, Exhibit B, and left the question whether or not Scott was dead, of what was done to him at Fort Garry on the 4th March, 1870, to the jury, expressing no opinion one way or the other. I then took up the question as to whether or not the prisoner was so connected with the killing of Scott, assuming Scott was killed, as to render him guilty of murder, and in this connection I reviewed the evidence showing his complicity in or freedom from all the acts and incidents surrounding Scott's sentence and his being shot and killed.

I then said to the jury you are to find

1. Was there any *de facto* government having sovereignty, the absolute arbiter of the life and death of the people of the Red River, established by the general consent of the people? If you find there was no such government you need go no further in your investigations in this direction. I tell you as a matter of law, there was no such government. But if you should not feel disposed to adopt my direction on this point you will inquire

2. Assuming a *de facto* government, had that government any *cause whatever, military* or *civil*, which according to any code of laws in any civilized country, would justify the killing of Scott. If you say no—and I charge you no such cause has been shown in the evidence, or suggested by the counsel for the prisoner—then comes the question

3. Was Scott killed at Fort Garry as charged? Did he die of the injuries there received at the time, or within a short time thereafter, and is he dead. If you say yes to this question, and it is entirely for you to determine it, then comes up the last and final question.

4. Did the prisoner do it? Was he there or near there consenting whereto aiding and directing, and if need be ready to do himself what he was directing others to do? If you answer this question in the affirmative also the question as to the death of Scott, and adopt what I charge you in respect of the Government *de facto* and the attempted justification of this charge under such a Government, then you will say and find as your verdict that the prisoner is guilty of the murder charged in the indictment.

The Jury retired about half-past four o'clock P.M., and the Court took recess to half-past seven o'clock P.M. Some time before that hour word was sent to me by the jury through the Sheriff that the jury had agreed upon their verdict. At half-past seven the jury brought in a verdict of guilty as charged in the indictment, with a recommendation to mercy.

The trial commenced on Tuesday the 13th day of October and terminated on Monday the 26th day of the same October, 1874. After the verdict had been recorded I was about to proceed to pronounce the sentence of the law upon the prisoner when the Counsel for the prisoner requested me to defer the sentence for consideration and consultation with his Counsel as to whether or not they would make any motion in arrest of judgment or otherwise. I acceeded to the request,and on Thursday the 29th day of October, 1874, the prisoner was placed in the dock and upon being asked if he had anything to say why sentence should not be passed upon him for the murder of which he had been convicted, his Counsel, Mr. Chapleau rose and said:

"I have to move the arrest of the judgment on the grouuds and for the reasons set forth in the paper which I hold in my hand." (He then read the paper which was directed to be filed and is hereto annexed marked Z 2.)

I disallowed the motion, and in doing so I remarked that as to the first and second grounds they had already been disposed of by the judgment of this Court (a copy of which said judgment is hereto annexed marked Z.) As to the two other grounds no exception was taken or asked to be noted before or at the time the jury was sworn nor until this moment. If then there had been any mere irregularity in the order of calling, choosing and swearing the jury it cannot be raised now. It should have been done and formally done at the time. But there was in fact no irregularity as will be seen by reference to the record of calling, choosing and swearing the jury kept by the clerk. The third ground is simply this. That in calling an English Juror from the English list the clerk continued calling consecutively until he obtained a juror who was not challenged or ordered to stand aside but was sworn on the panel, and so with the French list Joseph Berthelet was called and challenged by the Crown and set aside, and then Peter Harknutt standing next on the list was immediately called and not being challenged or ordered to stand aside was sworn on the panel which was strictly regular. Had Harknutt been set aside for any cause then the next name in succession would have been called and so on till a juror was obtained from the French list. It would have been irregular to have done otherwise. The facts stated in the fourth objection or ground are incorrect as the record shows the occasion of it was caused by the following incident in empanelling the jury. When the French list had been exhausted by those chosen and sworn and the challenged and stand asides, I asked the Counsel how should the clerk then proceed should he take the stand asides as they stood on the *venire facias* or commence at the middle of the stand asides and call alternately each way. I understood the Counsel for the Crown and the prisoner to assent to the latter mode, and the clerk was instructed accordingly. The clerk called Duncan McDougall who was peremptorily challenged by the Crown making the fourth and last challenge to which the Crown was entitled except for favor. Here Mr. Chapleau objected to this course and contended the statutes directed the Jurors should be called as their names appeared on the general panel, I said if you wish it, it shall be so and directed the Clerk so to call the Jurors yet to be called. The clerk did so and when he came to the name of McDougall he was about passing it over when Mr. Chapleau called his attention to it and insisted upon his being called, I then stated to Mr. Chapleau that the Crown had four peremptory challenges that it had exercised three and the fourth was McDougall if he was to be considered as having been called. If not the clerk would call him and then the Crown would challenge so it was as broad as it was long and made no difference which was done, and to this both Counsel for the prisoner and the Counsel for the Crown assented and expressed themselves satisfied, and the choosing of the jury was proceeded with McDougall being considered and counted as challenged by the Crown, and I never heard it mentioned from that time till Mr. Chapleau now raised it, but not with a correct statement of facts, I therefore overruled the objections. I then proceeded and passed the sentence of the law on the prisoner to be executed on the 29th day of January between the hours of 8 and 10 o'clock in the forenoon. In pronouncing sentence I made some remarks to the prisoner which are pretty correctly reported in the newspapers, I clip the annexed report of what I said from the *Nor-Wester* of the 10th November, 1874, I annex it hereto marked Z, 3. I also annex hereto a copy of the indictment and of the prisoner's plea to the jurisdiction of the Court which on demurrer was disallowed marked Z, 4 and Z, 5 such of the exhibits as could be found are sent herewith. Those not with the exhibits may be found in the sessional and other public documents, of course the prisoner's counsel had very few original documents but where I was satisfied the copies produced were true copies of genuine documents I permitted them to be considered as read and filed, I think the foregoing contains all that I have to report respecting this trial, I told the jury after the verdict was recorded that I fully concurred in the verdict and could not see how their verdict on the evidence could

have been otherwise, I told them I would convey their recommendation to mercy with a full report of the whole to His Excellency for his consideration. In the foregoing report that has been done. All of which is most respectfully submitted.

É. B. Wood,
C. J.

To His Excellency, The Governor General,
&c., &c., &c.
Winnipeg, 25th November, 1874.

The Judge to Lepine, on sentencing him.

After the prisoner had been asked if he had anything to say why the sentence of the Court should not be passed on him, and his Counsel, Mr. Chapleau, had read a memorandum containing certain legal objections which His Lordship overruled, His Lordship, amidst the most profound silence, and with emotions which he with difficulty surpressed, proceeded in a measured and solemn tone:

Prisoner, you stand convicted of having, on the 4th of March, 1870, at Fort Garry, in that portion of Rupert's Land which has since become the Province of Manitoba, murdered Thomas Scott. An unlawful ordinary homicide is a startling and shocking occurrence in a civilized and Christian community at any time, but the killing of Scott is taken out of the category of common homicides. So dreadful and so horrible was it, that even those who at first felt disposed to sympathize with the cause of the insurrectionary movement, would not believe it possible until the dark deed was perpetrated. The knowledge of it sent a thrill of horror throughout the Dominion of Canada and the civilized world, and struck the hearts of the settlers of Red River with shuddering terror; and although four years have passed away, that crime is still regarded by the people of Red River and the Dominion of Canada with unabated abhorrence; and not a solitary individual has ever dared to speak or write a single sentence, I will not say in justification, but even in extenuation, palliation, excuse or apology of its enormity; and the evidence given on your trial, instead of relieving, has added to and increased the dark shadows surrounding that awful tragedy. A jury, the majority of whom are natives of Red River, and one-half French Metis, for two weeks have patiently listened to all that could be said in your defence. Your counsel, most sympathetic, learned, able and eloquent gentlemen, did all that could be done in your behalf. In your defence they were allowed the widest latitude; but to the credit of human nature and to the honour of the profession be it said, during their entire defence they had not one syllable in justification or apology to offer for the awful crime of which you have been convicted. They did all for you that great ability and great eloquence, with the greatest liberty of defence, could accomplish. The question of your guilt or innocence was fairly left to that jury by the Court, your counsel having taken no exception to the charge. That jury have pronounced you guilty; and I must say I do not see how they could have done otherwise. Indeed, I do not believe twenty respectable French Metis can be found in the whole Red River Settlement who would not have come to the same conclusion, and who do not now approve of the verdict of that jury, whatever native Canadians may say in respect to it. You can claim no consideration on the ground of ignorance or misapprehension. Père Ritchot swears he advised you and others of the risk and the danger you incurred in the movement in which you and your confreres were engaged. Long prior to the commission of this offence you had before you the proclamation of the Governor General, issued by Order of the Queen, forgiving you and your associates in treason all you and they had done up to that time, providing you returned to an observance of the laws, and obedience to the lawful authority of the land. You were assured by official documents under the hand of the Governor General, and proceeding from the Privy Council of Canada, that all possible grievances, if any existed, should be redressed; that the most generous and liberal policy towards the inhabitants of

Red River should be pursued in dealing with the North-west Territories, and in thus carrying out the policy of the Empire—that all their possessory and other rights should be respected—in short that the Imperial measure for uniting Rupert's Land and the Indian Territories to Canada had been conceived as much in the interests of the population of Red River as in that of Canada and the Empire at large. To enforce these views and to render conviction of their truth irresistible, gentlemen of unquestionable integrity, and such as must have commanded your confidence and that of the misguided men over whom you assumed to exercise control, or with whom you were associated in your unreasonable and unlawful rebellion to the constituted authority of the country, were sent to you as special commissioners. For what was done by you and your asssociates from that time onward, whatever may be said as to what was done prior thereto, you and your associates stand before the world without a shadow of excuse or justification. You would not heed the warning, you would not listen to what you knew was the truth. You imprisoned, and I may say from what has been disclosed on this trial, tortured those even innocent of actively opposing your mad proceedings. You robbed Her Majesty's loyal subjects of their property, and plundered wherever you could do so with impunity. And lastly, you crowned the long catalogue of your crimes with the slaughter of Thomas Scott for no other offence than loyalty to his Queen. But it is not my province to say anything by which one additional sting should be added to that remorse, which in all charity it is to be hoped you now experience for the past. I have made these remarks to prepare you for what I now say to you. I dare not hold out any hope that mercy will be extended to you for the crime of which you have been convicted. In my heart of hearts I pity your wife and children, your relations and friends. They must keenly feel your situation. Had you taken the advice of your brother Baptiste on that fatal evening of the 3rd of March, you would not now be where you are. It is one of the inevitable consequences of crime to involve all relations and connections in its punishment, and knowing this, it alone should have arrested you in your mad career. You did not spare poor Scott. You did not think of, or if you did, you did not regard his poor old mother or his relations. Where his ashes repose you may know, but we do not. Whether his body was made away with so as not to be found, to set up as a defence as has been done on this trial, or because it was so mangled and mutilated that even you were ashamed it should ever be seen, is unknown. What was done with Scott's body you must know. Taking all the facts in evidence together, well might the ever to be lamented Sir George E. Cartier, in a private and confidential communication to Lord Lisgar, say "the killing of Scott was an excessive abuse of power and cruel brutality." The jury have recommended you to mercy. All the exceptions taken by your counsel together with the entire evidence and proceedings and the recommendation to mercy, will be transmitted to the Secretary of State for Canada, and by him laid before His Excellency the Governor General in Council. In addition to that your Counsel will have the opportunity of presenting to the Executive any considerations they may think advisable outside the record. I have but one course left open to me, and that is to pronounce on you the final sentence of the law. I have made the day of your execution more distant than I otherwise might have done, in consequence of the distance and the length of time necessary in communicating between Manitoba and Ottawa, and to give you ample opportunity for self examination, for reflecting over your past life, and for preparation for that awful change which awaits you. You, unlike Scott, will not be forced to prepare to leave this and enter the invisible world in a few short hours. When the Rev. Mr. Young came to you like an angel of mercy and with streaming eyes begged you to spare Scott's life only for a few short hours to enable him to prepare to meet his God, you inhumanly denied and refused his request with a brevity and an emphasis in keeping with every act surrounding this human butchery. After Scott's death this same messenger of Heaven, bathed in tears, went to Riel, along with the Bishop of Rupert's Land, and humbly implored Riel to give him the body that he might give it the last sad rites of the church, intimating that he was about writing to his poor old mother the untimely death of her son, and that it would be a consolation to her to know that her son had

received Christian burial. Even Riel's heart softened under this appeal. But you, Riel declared, claimed that you had the disposition of the body, and that you utterly refused to surrender it for burial. To all entreaties to spare life for a brief moment before death, and to give the body for burial after death, you were alike inflexible. Search the annals of the barbarous tribes which for centuries have roamed over the vast prairies of the North-west, and in them you will fail to find a parallel in savage atrocity. There is no spirit of vengeance in these proceedings. It is the triumph of law over the unbridled audacity of crime. As this, in all probability, is the last opportunity I shall ever have on earth of speaking to you, I thought it my duty, however painful it might be, to address these plain and candid observations to you that you might realize your true position and prepare to meet your God. The sentence of the law upon you is that you be taken from the place where you now are to the common gaol of this Province and there be kept in solitary confinement until the twenty-ninth day of January, 1875, and on that day, between the hours of eight and ten o'clock in the forenoon, you be taken thence to the place of execution and there be hanged by the neck until you are dead, and may the God of pity have mercy on all of us.

2nd Session, 3rd Parliament, 38 Victoria, 1875.

MESSAGE

Transmitting further Correspondence relating to the Commutation of the Sentence of Death on Ambroise Lepine.

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